HONOURABLE SRI JUSTICKE R.SUBHASH REDDY

WRIT PETITION No.7176 of 2007

Dated 13TH AUGUST, 2007

BETWEEN

NV.Chittibabu and anr

------Petitioners

and

Quthubullapur Municipality, Ranga Reddy District,
Rep. By its Commissioner, and, anr

….Respondents.

HONOURABLE SRI JUSTICKE R.SUBHASH REDDY

WRIT PETITION No.7176 of 2007

ORDER:

In this Writ Petition, the petitioners seek Writ of Mandamus to declare the action of the first respondent in not taking any action against the second respondent for the unauthorized conversion of residential flats into commercial use, pursuant to their representation dated 31-3-2007 as illegal and arbitrary.

The second respondent is a private limited company, engaged in the business of construction of residential flats, buildings etc. It has taken up the developmental works in Sy.Nos. 73 and 75 of Jeedimetla village in Quthubullapur Municipality, Ranga Reddy District. By obtaining due permission from the first respondent-Municipality, it has constructed residential flats in separate blocks. Constructions were made in phased manner and in one of its phases, it has constructed three independent apartment blocks, which are not interconnected, and, which are named as 'Satyam', 'Shivam' and 'Sundaram'. The entire area is named as Ramarajanagar colony. The petitioners are the owners and residents of flats in the Sundaram block. It is the grievance of the petitioners that in Satyam block, though permission was given for construction of residential flats, but the second respondent has unauthorisedly converted the residential flats

into commercial use and running a super market. Though it is alleged that there were some unauthorized constructions in the Sundaram block, no relief is sought with reference to the same in this Writ Petition. The petitioners relying on the intimation given to one of the residents of Sundaram block, by name, Sri C.K. Raja, in which, the first respondent-Municipality vide proceedings No. G/RTI/10/2006-07, dated 29-3-2007 stated that no permission was granted to the second respondent for commercial use in Satyam block, filed representation on 31-3-2007 before the first respondent-Commission Quthubullapur Municipality, Ranga Reddy District to stop unauthorized conversion by the second respondent-company in converting ground and first floors of Satyam block into commercial use and immediately five days thereafter, this Writ Petition is filed complaining inaction on the part of the first respondent-Municipality.

Separate counter affidavits are filed by the respondents.

In the Counter affidavit filed by the first respondent-Commissioner, Quthubullapur Municipality, while generally denying the allegations of the petitioners, it is stated that the second respondent made construction of several apartments and the some of them were converted into commercial use in violation of the sanctioned plan. It is stated that in view of the orders of status quo passed in O.S.No. 439 of 2005 by the Court of the learned Principal Senior Civil Judge, Ranga Reddy District, and in O.S.No. 121 of 2005 by the Court of the learned Junior Civil Judge, Medchal, Ranga Reddy District, the first respondent could not proceed further and assured that sooner the judgments are delivered in the above suits, further appropriate action will be taken.

The second respondent filed detailed counter. While generally denying the allegations of the petitioners, it is stated in the counter affidavit that three independent blocks, A,B & C in Phase-II were constructed and they were named as Satyam, Shivam and Sundaram. It is stated that each block is independent of the other, and for each block, separate plan was approved by the authorities. It is further stated that the first petitioner is the owner of Flat No. 523 in fifth Floor of Sundaram Block having purchased from its earlier owner, by name, Vaidyanathan Ganapathy, and, the second

petitioner is the purchaser of Flat No. 108 in First Floor of the same block. While pleading that the two petitioners are not owners of any flats in Satyam block, and, in absence of any statement in the Writ Petition as to how they are affected in the use of Satyam block, they have no locus standi to file this Writ Petition. It is stated that an association was formed, by name, Ramarajanagar Residents Welfare Association by some persons having vested interest and, the said association, earlier, filed suit in O.S.No. 404 of 2006 in the Court of the learned Junior Civil Judge, Medchal for perpetual injunction and along with the said suit, the association also filed an Interlocutory Application in I.A.No. 1311 of 2006 seeking similar such relief and the same was dismissed by order dated 28-7-2006. It is stated that having failed to obtain interim orders in the said interlocutory application, the said association got the suit dismissed as not pressed on 14-12-2006 and thereafter, filed Writ Petition No.27016 of 2006 before this Court. In the said Writ Petition also, similar such contentions were advanced, but, however, a Division Bench of this Court, dismissed the said Writ Petition by order dated 28-12-2006. It is further stated that the petitioners are the name-lenders of the Ramarajanagar Residents Welfare Association, and, they are seeking relief in this Writ Petition on similar set of facts and law. It is further stated that there is a recognized society, by name, Ramarajanagar Owners Welfare Association, which had requested the second respondent to provide space in Satyam block to locate super market, as there is no super market nearby the said area of the residents living in Ramarajanagar colony. As such, ground and first floor of Satyam block was leased out to M/s. The Mahamart Trading Private Limited, which is running super market by obtaining trade licence and is catering to the needs of the owners and residents of Ramarajanagar colony.

Reply affidavit is filed by the petitioners denying the knowledge of the order dated 28-12-2006 passed by the Division Bench of this Court in Writ petition No. 27016 of 2006, and, suits filed before the Civil Courts and orders passed therein.

Heard Sri Sai Gangadhar Chamarthy, learned Counsel appearing for the petitioners, Sri P.Radha Krishna, learned Standing Counsel appearing

for the first respondent-Municipality, and, Sri B.Venkatrama rao, learned Counsel appearing for the second respondent.

It is submitted by the learned Counsel appearing for the petitioners that though the first respondent granted permission for the residential use of the flats only, but however, on his own, the second respondent converted the same for commercial use, and in spite of representation filed before the first respondent, no action is being taken. It is further submitted that as much as there is road facility adjoining Satyam block to enter into Ramarajanagar colony, and, though they are the residents and owners of different flats in the Sundaram block, but however, the said road to Ramarajanagar colony is near the approach site of Satyam block, and, as such they are the affected parties and they have locus standi to file this Writ petition.

On the other hand, it is submitted by the learned Counsel appearing for the respondents that similar such contentions are advanced in Writ Petition No. 27016 of 2006 filed by the Ramaraja Nagar Residents Welfare Association at the instance of the petitioners, and, the Division Bench of this Court dismissed the said Writ Petition by order dated 28-12-2006. It is further submitted that the Ramarajanagar Owners Welfare Association passed a resolution for making provision for running super market, and, as such, super market is being run in the ground and first floors of Satyam block and more than 500 families are utilizing the said facility and these petitioners have filed this Writ Petition with a mala fide intention only to harass the respondents for extraneous considerations.

I have perused the copy of the plaint initially filed by the Ramarajanagar Residents Welfare Association in O.S.No. 404 of 2006 on the file of the learned Junior Civil Judge, Medchal, Ranga Reddy District. In the said suit also, the second respondent herein was made as third defendant. A specific averment was made in the said suit that the second respondent herein by obtaining permission for construction of residential flats, converted the same for commercial use. An interlocutory application in I.A.No. 1311 of 2006 was filed along with the said suit. After considering the respective contentions, the said interlocutory application was dismissed by

the Court below by order dated 28-7-2006. Subsequently, the said suit was dismissed as not pressed on 14-12-2006. Thereafter, Writ Petition No. 27016 of 2006 was filed before this Court. Even in the said Writ petition also, specific allegation was made that the second respondent-company constructed unauthorized commercial apartments in Satyam block. The said Writ Petition was dismissed by the Division Bench of this Court by order dated 28-12-2006. Thereafter, this Writ petition is filed alleging that as per the information furnished to one of the owners in Sundaram block, by name, G.K.Raja, the petitioners filed a representation on 31-3-2007 before the first respondent and complaining inaction on the part of the first respondent, this Writ Petition was filed five days thereafter. Though reply affidavit is filed by the petitioners denying the knowledge of the earlier orders of this Court and Civil Courts, but, if the said plea is examined with reference to the plea of the second respondent, it shows that this Writ petition is a designed one and the petitioners are the name-lenders of the Ramaraja Nagar Residents Welfare Association, which, earlier filed Writ Petition No. 27016 of 2006, which was dismissed by this Court by order dated 28-12-2006. From the sequence of events, and, the orders of this Court and Civil Courts, it is clear that this Writ Petition is filed only to circumvent the orders passed in the earlier Writ Petition and suits. At the first instance, Ramarajanagar Residents Welfare Association filed suit in O.S.No. 404 of 2006 in the month of July, 2006 making similar such allegations, and when their attempt to get interim injunction was not fructified, the said association got the suit dismissed as not pressed on 14-12-2006 and filed Writ Petition No. 27016 of 2006 before this Court, which was also dismissed by the Division Bench by order dated 28-12-2006. This Writ Petition is filed complaining inaction of the first respondent on their representation dated 31-3-2007. After filing the representation, the petitioners did not even wait for a reasonable period, and, only five days thereafter, this Writ Petition is filed. Though in the affidavit filed in support of the Writ Petition, no details are given as to how they are affected persons, but, when locus standi of the petitioners is raised by the respondents in their counter affidavits, in the reply affidavit, it is stated that they have access from the adjoining lane of the Satyam block.

Further, it is to be seen that though the learned Counsel for the

petitioners relied on the decisions of the Supreme Court, wherein directions were issued for not allowing residential flats for the use of commercial purpose, but, in this Writ petition, the petitioners merely seek relief to declare the inaction on the part of the first respondent-Municipality as illegal and arbitrary. In the counter affidavit filed by the first respondent, it is stated that there are orders of status quo passed by the Civil Courts in O.S.Nos. 439 of 2005 and 121 of 2005 and assured for taking action subject to out come of the said suits. When the matters are seized by the Civil Court and, there are interim orders of status quo, the petitioners can very well agitate their rights by filing appropriate applications in the said suits. But without making any such effort, the petitioners rushed to this Court. Though it is contended by the learned Counsel for the petitioners that the interim orders passed by the Civil Courts will not come in the way of taking action by the first respondent against the second respondent, but however, when the orders of status quo are there, it is for the petitioners to seek such clarification, and, the petitioners did not make any such effort. In spite of specific plea taken by the petitioners that ground and first floor of Satyam block were leased to M/s. Mahamart Trading Pvt.Ltd for running super market, no steps have been taken to implead the said lessee as party respondent in the present Writ Petition. Any order or direction sought by the petitioner in this Writ Petition will affect the rights of the said company, which is not before this Court. In any event, having regard to the several contentious issues raised and serious factual disputes involved in the Writ Petition, no direction can be issued in a petition of this nature, which is filed under Article 226 of the Constitution of India, so much so, when similar such contentions were raised in the earlier Writ Petition No. 27016 of 2006, which was dismissed by the Division Bench of this Court by order dated 28-12-2006.

For the foregoing reasons, the Writ Petition deserves to be dismissed, with costs and is accordingly dismissed.

JUSTICE R. SUBHASH REDDY

DATED: 13th August, 2007
Msnr.